

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KARLA CHRISTINE FLORES

VS.

ALLEN HENDERSHIEDT TRUCKING, INC.
and KEVIN WARNER

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CIVIL ACTION NO. 4:22-cv-778

JURY TRIAL REQUESTED

**DEFENDANT KEVIN WARNER'S
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant KEVIN WARNER file this Notice of Removal pursuant to 28 U.S.C. §§1441 and 1446, showing the following basis for removal.

INTRODUCTION

1. Plaintiff KARLA CHRISTINE FLORES filed Plaintiffs' Original Petition against Defendants on August 31, 2021, under Cause No. 2021-55686, pending in the 165TH District Court, Harris County, Texas. Citations upon the Defendants ALLEN HENDERSHIET TRUCKING, INC., and KEVIN WARNER., were issued on September 2, 2021.

2. Defendant, ALLEN HENDERSHIEDT TRUCKING, INC., was served with Plaintiff's Original Petition through its owner and registered agent, Allen Hendershiedt., on September 20, 2021. Defendant, ALLEN HENDERSHIEDT TRUCKING, INC., consents to this Removal.

3. Defendant, KEVIN WARNER., was served with Plaintiff's Original Petition through Allen Hendershiedt by certified mail., on February 18, 2022.

4. This original Notice of Removal is filed within thirty days of service upon Defendant KEVIN WARNER, the statutory period for removal as required under 28 U.S.C. §1446(b).

JURISDICTION

5. This court has removal jurisdiction over this lawsuit pursuant to 28 U.S.C. §§1441 and 1446 and based upon diversity of citizenship under 28 U.S.C. §1332. Plaintiffs are domiciled in Texas and is a citizen of this state. Defendant, KEVIN WARNER is domiciled in Worthington, Minnesota and therefore a citizen of that state. Attached hereto as exhibit “1” is the affidavit of KEVIN WARNER attesting that at the time of the incident and currently, he is a resident of the State of Minnesota. As stated in the service documents, Mr. Warner was served with citation at an address in Worthington, Minnesota. ALLEN HENDERSHIEDT TRUCKING, INC., is incorporated in the State of Minnesota with its principal place of business in Worthington, Minnesota, and therefore a citizen of the State of Minnesota. Thus, there is diversity of citizenship between the parties because plaintiff is a citizen of Texas and the properly joined defendants are citizens of another state.

BASIS FOR REMOVAL

6. As alleged in Plaintiffs’ petition, Defendant Allen Henderschedit Trucking, Inc. is nonresidents of the State of Texas. As attested to in Exhibit “1” Defendant KEVIN WARNER was a resident of Minnesota at the time of the incident made the basis of this suit. Since neither Defendant is a resident of Texas, Diversity of Citizenship exists related to this case. Pursuant to 28 U.S.C. 1332 (a) Jurisdiction is proper when the matter in controversy is between citizens of different States. Plaintiff is a resident of the State of Texas. Neither Defendant is a resident of the State of Texas but are both residents of the State of Minnesota. Therefore, Diversity of

Citizenship exists, and Jurisdiction is proper in this Court.

7. Consistent with TEX. R. CIV. P. 47, Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00 in damages in his Original Petition. Therefore, based on information and belief of Defendant herein, Plaintiffs are seeking damages in excess of this court's jurisdictional minimum of \$75,000.00, excluding interest and costs pursuant to 28 U.S.C. 1332 (a).

8. All defendants who have been properly joined and served join in or consent to the removal of this case to federal court. 28 U.S.C. §1446(b)(2)(A); *Cook v. Randolph Cnty.*, 573 F.3d 1143, 1150-51 (11th Cir. 2009); *Pritchett v. Cottrell, Inc.*, 512 F.3d 1057, 1062 (8th Cir. 2008); *Harper v. Auto Alliance Int'l, Inc.*, 392 F.3d 195, 201-02 (6th Cir. 2004).

9. All pleadings, process, orders, and other filings in the state court action in the possession of Defendants are attached to this notice as required by 28 U.S.C. §1446(a).

10. Venue is proper in this district under 28 U.S.C. 1391(b)(2) because the sole basis for Plaintiffs' suit and claim for damages arose from a motor vehicle accident which happened in Harris County, Texas.

11. Defendant will promptly file a copy of this Notice of Removal with the clerk of the state court where the action has been pending.

JURY DEMAND

12. Defendants hereby make a demand for a jury trial.

CONCLUSION

For these reasons, Defendant KEVIN WARNER gives notice of their removal of this lawsuit to this Court, and an automatic stay of further proceedings in state district court.

Respectfully submitted,

BUSH & RAMIREZ, PLLC

/s/Lee D. Thibodeaux

Lee D. Thibodeaux
State Bar No. 19834200
Southern District Bar No. 68757
5615 Kirby Drive, Suite 900
Houston, Texas 77005
(713) 626-1555 Telephone
(713) 622-8077 Telecopier
lthibodeaux.atty@bushramirez.com

**ATTORNEY FOR DEFENDANTS ALLEN
HENDERSCHIEDT TRUCKING, INC., and
KEVIN WARNER.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been provided to all counsel of record in accordance with FEDERAL RULES OF CIVIL PROCEDURE on March 10, 2022.

Husain Hadi
The Hadi Law Firm
7100 Regency Square Boulevard, Suite 140
Houston, Texas 77036.

/s/ Lee D. Thibodeaux

Lee D. Thibodeaux